

REMARKS

Claims 1-20 were originally filed in the present case. The claims were subject to a restriction requirement; the applicants elected Claims 1-13 in a previous response. The applicants have canceled Claim 5. Thus, Claims 1-4 and 6-13 are presently pending and stand rejected by the Examiner.

In the Office Action dated 1/13/03, the Examiner requested that new corrected drawings be submitted (Office Action, pg. 6). As requested, substitute drawings are attached to the present communication.

Applicants note that all amendments and cancellations of Claims presented herein are made without acquiescing to any of the Examiner's arguments or rejections, and solely for the purpose of expediting the patent application process in a manner consistent with the PTO's Patent Business Goals (PBG),¹ and without waiving the right to prosecute the amended or cancelled Claims (or similar Claims) in the future.

In the present Office Action, the Examiner made a number of arguments, objections, and rejections. For clarity, the rejections at issue are set forth by number in the order they are herein addressed:

(1) Claims 1 and 4-13 stand rejected under 35 U.S.C. 102 as allegedly being anticipated by Dederen et al. (U.S. Patent Application US2002/0065328 A1; hereinafter Dederen); and

(2) Claim 2-3 stand rejected under 35 U.S.C. 103 as allegedly being obvious in light of Dederen.

I. The Claims are Novel

Claims 1 and 4-13 stand rejected under 35 U.S.C. 102 as allegedly being anticipated by Dederen (Office Action, pg. 2). The applicants respectfully disagree with this rejection. However, in order to further the business interests of the Applicants and while reserving the right to prosecute the original (or similar) claims in the future, the Applicants have amended Claims 1, 9, 11, and 13. Amended Claims 1 and 9 recite a composition that further comprises a biological

¹ 65 Fed. Reg. 54603 (Sept. 8, 2000).

agent comprising a nucleic acid. Amended Claims 11 and 13 recite compositions comprising expression vectors. Dederen does not teach a nanoemulsion composition comprising a biological agent, in particular a nucleic acid or expression vector. Indeed, Dederen is directed towards compositions for use in cosmetic skin creams and milks, while the present invention is directed towards compositions that may be used, for example, in the delivery of therapeutics (*e.g.*, pharmaceuticals) through the skin. As such, applicants respectfully request that the rejection be withdrawn.

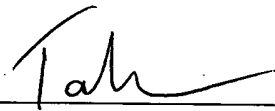
II. The Claims are non Obvious

Claims 2-3 stand rejected under 35 U.S.C. 103 as allegedly being obvious in light of Dederen. Applicants disagree with this rejection and submit the Examiner has not established a *prima facie* case of obviousness. Applicants note that Claims 2-3 are dependent on Claim 1. As described above, Claim 1 has been amended to recite a composition that further comprises a biological agent comprising a nucleic acid. As Dederen does not teach a nanoemulsion composition comprising a biological agent, in particular a nucleic acid, applicants respectfully request that the rejection be withdrawn.

CONCLUSION

All grounds of rejection and objection of the Office Action of January 13, 2003 having been addressed, reconsideration of the application is respectfully requested. It is respectfully submitted that the Claims should be allowed. If a telephone interview would aid in the prosecution of this Application, Applicants encourage the Examiner to call the undersigned collect at 608-218-6900.

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